

AMENDED IN ASSEMBLY AUGUST 21, 2006

AMENDED IN ASSEMBLY JUNE 30, 2005

SENATE BILL

No. 611

Introduced by Senator Speier

February 22, 2005

An act to add Article 6.5 (commencing with Section 110806) to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, relating to food.

LEGISLATIVE COUNSEL'S DIGEST

SB 611, as amended, Speier. Meat and poultry recalls.

The existing Sherman Food, Drug, and Cosmetic Law establishes requirements for the identification and branding of food, and provides for the administration of those requirements by the Food and Drug Branch of the State Department of Health Services, and, upon request of local agencies, for the administration of certain requirements by local health officers. Violation of this law is a crime.

This bill would require a meat or poultry supplier, distributor, broker, or processor that sells a meat- or poultry-related product in California that ~~is subject to a voluntary recall requested or issued by~~ *meets the criteria for a Class I or Class II recall according to the United States Department of Agriculture (USDA) guidelines* to immediately notify the State Department of Health Services and to provide the department with a list of ~~retailers~~ *all customers, as specified*, that have received or will receive any product subject to recall that the supplier, distributor, broker, or processor has handled or anticipates handling.

The bill would authorize the department to notify appropriate local health officers and environmental health directors that a supplier,

distributor, broker, processor, or retailer in the local jurisdiction has handled or received, or anticipates handling or receiving, a meat- or poultry-related product that is subject to a voluntary recall requested or issued by the USDA.

If

This bill would provide that if the department makes that notification, ~~the bill would require~~ the department, local health officers, and environmental health directors ~~to~~ may notify the public regarding recalled meat- and poultry-related products. The bill would ~~prohibit notification from being made in the case of USDA Class III recalls, and would require the exclusion from that requirement of the name or identifying features of the retailer if the retailer is a restaurant and it is determined that the contaminated product has not been served to the public and has been permanently removed from the restaurant's food supply. By creating additional duties for local government, this bill would impose a state-mandated local program.~~

By changing the definition of a crime, this bill would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Food recalls are voluntary and federal agencies responsible
4 for food safety have no authority to compel companies to carry
5 out recalls—with the exception for the Food and Drug
6 Administration’s (FDA) authority to require a recall for infant
7 formula.

8 (b) In January 2004, the President of the United States
9 identified the nation’s food system as vulnerable to intentional
10 acts of terrorism (Homeland Security Presidential
11 Directive/HSPD-9 Defense of United States Agriculture and
12 Food (January 30, 2004).

13 (c) According to the United States Government Accountability
14 Office’s (GAO) analysis of recalls in its October 2004 report on
15 “Food Safety: USDA and FDA Need to Better Ensure Prompt
16 and Complete Recalls of Potentially Unsafe Food,” only 38
17 percent and 36 percent of recalled food was ultimately recovered
18 in recalls overseen by USDA and FDA, respectively.

19 (d) According to the same GAO report, “the USDA and FDA
20 do not know how promptly and completely the recalling
21 companies and their distributors and other companies are
22 carrying out recalls, and neither agency is using its data systems
23 to effectively track and manage its recall programs.”

24 ~~(e) In 2002, the State Department of Health Services signed a~~
25 ~~federal Memorandum of Understanding (MOU) with the USDA,~~
26 ~~which prevents state and local health officials from properly~~
27 ~~notifying the public that recalled products are potentially harmful~~
28 ~~and should not be consumed.~~

29 ~~(f) For example, health officers were advised during the~~
30 ~~USDA recall of beef issued last December that due to the MOU,~~
31 ~~data about which retailers had received the potentially~~
32 ~~contaminated product could not be revealed to the consumer, no~~
33 ~~matter the seriousness of the outbreak.~~

34 ~~(g) The State Department of Health Services has subsequently~~
35 ~~attempted to revise the current MOU, but has received no~~
36 ~~response from the federal government.~~

37 ~~(h)~~

1 (e) Continued weaknesses in our current voluntary system for
2 monitoring food recalls heighten the risk that unsafe food will
3 remain in the food supply and ultimately be consumed.

4 (i)

5 (f) It is the intent of the Legislature to improve food recall and
6 public notification procedures in the event of a USDA meat or
7 poultry recall and protect California consumers from potential
8 contamination in the event of a serious food outbreak.

9 ~~SEC. 2. It is the intent of the Legislature that this act shall~~
10 ~~apply only to voluntary recalls requested or issued by the United~~
11 ~~States Department of Agriculture.~~

12 ~~SEC. 3.~~

13 SEC. 2. Article 6.5 (commencing with Section 110806) is
14 added to Chapter 5 of Part 5 of Division 104 of the Health and
15 Safety Code, to read:

16
17 Article 6.5. Recalled Food
18

19 110806. (a) A meat or poultry supplier, distributor, broker, or
20 processor that sells a meat- or poultry-related product in
21 California ~~that is subject to a voluntary recall requested or issued~~
22 ~~by~~ *meets the criteria for a Class I or Class II recall according to*
23 *the United States Department of Agriculture guidelines* shall
24 immediately notify the State Department of Health Services and
25 shall provide the department with a list of ~~retailers~~ *all customers,*
26 *including a firm name, address, contact person's name,*
27 *telephone number, fax, and e-mail address,* that have received or
28 will receive any product subject to recall that the supplier,
29 distributor, broker, or processor has handled or anticipates
30 handling. The list shall include all pertinent identifying codes,
31 including establishment numbers, package codes, product codes,
32 pack dates, and lot numbers, if any, received or to be received,
33 and any other relevant information. The information shall be
34 electronically submitted to the department in a spreadsheet
35 format specified by the department, and shall include, but not be
36 limited to, a complete product distribution list of the recalled
37 product, for each ~~retailer~~ *customer,* including product ship date,
38 amount of product shipped and amount of any product returned.
39 *The supplier, distributor, broker, or processor shall immediately*
40 *notify each of its customers that received or may receive those*

1 *products of the recall in a standardized format. The supplier,*
2 *distributor, broker, or processor shall document this notification*
3 *process, including who was notified, the date and time of the*
4 *notification, and by what method they were notified. This*
5 *information shall be maintained by the supplier, distributor,*
6 *broker, or processor and shall be provided to the department*
7 *upon request.*

8 (b) The department may, after receiving the information
9 required by subdivision (a), notify appropriate local health
10 officers and environmental health directors, as soon as
11 practicable, that a ~~supplier, distributor, broker, processor, or~~
12 ~~retailer business~~ in the local jurisdiction has handled or received,
13 or anticipates handling or receiving, a *recalled* meat- or
14 poultry-related product ~~that is subject to a voluntary recall~~
15 ~~requested or issued by the United States Department of~~
16 ~~Agriculture.~~ The department shall, if it makes the notification
17 authorized by this subdivision, provide appropriate local health
18 officers and environmental health directors with each supplier's,
19 distributor's, broker's, processor's, or retailer's name, address,
20 contact information, affected product identifying codes,
21 including establishment numbers, package codes, product codes,
22 pack dates, and lot numbers, if any, and all other supply chain
23 information available. ~~The department shall not provide the~~
24 ~~notification authorized in this subdivision for a United States~~
25 ~~Department of Agriculture Class III recall.~~

26 (c) (1) If the department makes the notification authorized by
27 subdivision (b), the department, local health officers, and
28 environmental health directors ~~shall~~ *may* notify the public in a
29 manner local health officers, in consultation with the department
30 and environmental health directors, deem appropriate regarding
31 recalled meat- and poultry-related products based on their
32 determination that the retailer is present within the local
33 jurisdiction and has received or made the product available to the
34 public. ~~The department, local health officers, and environmental~~
35 ~~health directors shall not provide this notification for a United~~
36 ~~States Department of Agriculture Class III recall.~~

37 (2) If the retailer is a restaurant, and a determination has been
38 made by a local health officer or environmental health officer
39 that the contaminated product has not been served, sold, or
40 otherwise offered to the public for consumption, and the

1 contaminated product has been permanently removed from the
2 restaurant's food supply, then the public notification shall
3 exclude the name or any other identifying feature of the
4 restaurant.

5 *110807. This article shall become operative on July 1, 2007.*

6 ~~SEC. 4. No reimbursement is required by this act pursuant to~~
7 ~~Section 6 of Article XIII B of the California Constitution for~~
8 ~~certain costs that may be incurred by a local agency or school~~
9 ~~district because, in that regard, this act creates a new crime or~~
10 ~~infraction, eliminates a crime or infraction, or changes the~~
11 ~~penalty for a crime or infraction, within the meaning of Section~~
12 ~~17556 of the Government Code, or changes the definition of a~~
13 ~~crime within the meaning of Section 6 of Article XIII B of the~~
14 ~~California Constitution.~~

15 ~~However, if the Commission on State Mandates determines~~
16 ~~that this act contains other costs mandated by the state,~~
17 ~~reimbursement to local agencies and school districts for those~~
18 ~~costs shall be made pursuant to Part 7 (commencing with Section~~
19 ~~17500) of Division 4 of Title 2 of the Government Code.~~

20 *SEC. 3. No reimbursement is required by this act pursuant to*
21 *Section 6 of Article XIII B of the California Constitution because*
22 *the only costs that may be incurred by a local agency or school*
23 *district will be incurred because this act creates a new crime or*
24 *infraction, eliminates a crime or infraction, or changes the*
25 *penalty for a crime or infraction, within the meaning of Section*
26 *17556 of the Government Code, or changes the definition of a*
27 *crime within the meaning of Section 6 of Article XIII B of the*
28 *California Constitution.*